

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v

TOWN OF FARMINGTON

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:44 IV liquidated damages

Employer: Town of Farmington, 356 Main St, Farmington, NH 03835

Date of Hearing: October 19, 2015

Case No. 51436

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on August 28, 2015. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on September 28, 2015.

The claimant testified that he worked for the employer from January of 2012 until July 21, 2015. He testified that his final pay check was for \$132.89. He filed the Wage Claim because he did not get the final check within 72 hours after being terminated. The claimant feels that the employer was willful and did not have good cause for the delay in his final wages.

The employer testified that there was a delay because the final payout was not a part of the regular payroll service. The claimant was terminated "for cause" and so a separate check had to be made up. At the time of the discharge the payroll person in the Town was on a vacation and the Town Administrator was only a part-time position. The claimant was paid in the regular payroll cycle and the delay, because of the termination, was an oversight.

The employer maintains that they follow the law and that in this case it was an oversight and not a willful act by the employer.

FINDINGS OF FACT

RSA 275:44 IV If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition.

This is the section of the law that allows for a claimant to seek liquidated damages up to the amount of the wages due and owing if there is a finding by the Hearing Officer that the employer was willful and did not have good cause for their action(s).

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the request for liquidated damages is not valid. The law sets a standard of willfulness and without good cause. In this case there was some turmoil in the Town with the payroll person being on vacation and the Town Administrator was in a part-time position. The delay was not long and corrected as soon as possible.

The action of the employer does not rise to the level of willfulness and there was good cause for the delay. The request for \$79.68 in liquidated damages is denied.

DECISION AND ORDER

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: November 12, 2015

TFH/kdc